IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14541 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORP.LTD. - Petitioner(s)

Versus

H.D.VORA - Respondent(s)

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Appearance :

MS SEJAL K MANDAVIA for Petitioner(s) : 1,
MR KISHOR M PAUL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/09/2005

ORAL JUDGMENT

Rule. Learned advocate Shri K.M.Paul waives service of notice of rule on behalf of the respondents. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal

today.

2. In the present petition, the petitioner has challenged the legality of the award dated 15.9.2004 passed by the Industrial Tribunal, Vadodara. The respondent who was working as a conductor with the petitioner Corporation was visited with the penalty of withholding of five increments permanently in the background of the allegations that on 14.7.98, the bus in which the respondent was discharging his duties as a conductor upon checking was found to be carrying ticketless passengers. The workman challenged this punishment before the Industrial Tribunal. The Industrial Tribunal while allowing the reference by its award dated 15th September, 2004 observed that the Corporation failed to produce legible copies of the statements recorded during the course of the inquiry. It was observed that it was the duty of the Corporation to prove the charges against the workman. It was further observed that in large number of cases, the Corporation is not being careful and on account of the negligence on the part of the Corporation, employees have to suffer wrongly. The Tribunal concluded that since despite sufficient opportunity being given to the Corporation,

the Corporation has failed to produce necessary documents for which it must suffer.

3. The reasoning and the conclusions of the Tribunal cannot be sustained. The respondent-workman had approached the Tribunal challenging the punishment imposed by the employer. Primarily it was his duty to prove that the punishment order was illegal. The burden of proving the charges could not have been thrown on the Corporation especially when no serious dispute was raised with respect to the legality of the departmental inquiry. Simply because some documents were not legible, the punishment order could not have been set aside without coming to a specific conclusion that the workman had not committed any misconduct or that the order of punishment suffered from some illegality.

4. In the result, the impugned award is quashed and set aside. Since the issues arising in the present proceedings have not been decided by the Industrial Tribunal on merits, I find it appropriate to remand the proceedings back to the Industrial Tribunal for fresh consideration and disposal. It will be open for either side to request the Tribunal to take up the proceedings

upon remand for expeditious disposal. Accordingly, the proceedings are remanded to the Industrial Tribunal, Vadodara as aforesaid. The petition is accordingly allowed. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)